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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,645	08/25/2006	Yvonne Susanna Veldhuizen	F776-4(V)	1494
201 7590 03/29/2011 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1789				
NOTIFICATION DATE		DELIVERY MODE		
03/29/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

### Office Action Summary

**Application No.**

10/590,645

**Applicant(s)**

VELDHUIZEN ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1789

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claim 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is vague and indefinite; the percent based on flour weight is unclear. Since the claim does not recite any other ingredient and the amount of flour, it is unclear if applicant is claiming a baker percentage which is based on 100% flour or some other weight.

Claims 2-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan et al as evidence by Karppanen et al ( EPO948265B1) submitted by applicant.

Yuan et al disclose a composition comprising sterol or stanol esterified with fatty acids and emulsifiers. The sterol or stanol derivatives can be esters of sunflower oil, cotton seed oil, palm oil etc... The emulsifier can be one emulsifier or mixture of emulsifiers selected from the group of lecithin, monoglyceride, polysorbate, sodium stearoyl lactylate, DATEM, glyceryl monostearate. The amount of emulsifier is present in the composition in amount of about 1% to about 5%. The amount of sterol or stanol ester is from about 30-90%. The amount of the composition in food product will depend upon the formulation; a typical range is from about 5-20%. The foods include baked products such as bread, cakes, brownies etc... ( see col. 1 line 63 through col. 2 line 25, col. 3 lines 43-62, col. 4, col. 6 lines 22-42)

The amount of emulsifier can be about 1% and the amount of sterol ester can be up to about 90%; thus the ratio of emulsifier to sterol can be from 1:30 to 1:90 when 1%

emulsifier is used. The ratio can range from 1:6 to 1:18 when the upper range of emulsifier is used. Both of these ranges include ratios falling within the claimed range. Yuan et al do not disclose the amount of the food ingredient containing the sterol or stanol ester and emulsifiers based on the weight of the flour. However, they do teach the amount of composition can vary depending on the food formulation. The amount of flour can vary depending on the type of baked product. For example, a known bread formulation disclosed in Karppanen et al contains 30kg flour. If 20% of the food ingredient is used in a bread formulation containing 30 kg of flour, then the amount of the food ingredient is 6kg. Out of which 90% or less can be the sterol ester. If 90% of sterol ester is used, then the % of sterol ester is 18%, but if 70% sterol ester is used, then the % of sterol ester is 14%. If 5% emulsifier is used, then the % of emulsifier is 1%. Thus, the calculation based on flour or total percentage is readily apparent to one skilled in the art and can be readily determined without undue experimentation. The calculation based on flour or total percentage does not lead to a different product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 23, 2011

/Lien T Tran/

Primary Examiner, Art Unit 1789